

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CODY DIJKSTRA,

Plaintiff,

v.

CAMPOS and MAGDALENO

Defendants.

Case No. 1:21-cv-01223-ADA-HBK (PC)

FINDINGS AND RECOMMENDATIONS TO
DISMISS CASE WITHOUT PREJUDICE FOR
FAILURE TO PROSECUTE AND COMPLY
WITH COURT'S LOCAL RULES¹

FOURTEEN-DAY OBJECTION PERIOD

Plaintiff Cody Dijkstra is a state prisoner proceeding pro se in this civil rights action. For the reasons set forth below, the undersigned recommends the district court dismiss this action for Plaintiff's failure to comply with a court order and prosecute this action.

BACKGROUND

Plaintiff Dijkstra, a state prisoner proceeding pro se and *in forma pauperis*, filed a civil complaint filed under 42 U.S.C. § 1983. (Doc. No. 1). On August 24, 2022, an Order of Reassignment was mailed to Plaintiff. (Doc. No. 25). On September 1, 2022, the August 24, 2022 Order was returned as undeliverable. (*See* docket). On December 14, 2022, the undersigned issued an order directing Plaintiff to file a Notice of Change of Address or show

¹ This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022).

1 good cause as to why this action should not be dismissed under Rule 41 and Local Rules 110 and
 2 183. (Doc. No. 26). On December 22, 2022, the Court's December 14, 2022 Order was returned
 3 as "Undeliverable, RTS, Paroled." (See docket).

4 APPLICABLE LAW

5 This Court's Local Rules require litigants to keep the court apprised of their current
 6 address and permits dismissal when the litigant fails to comply. Specifically:

7 "[a] party appearing *in propria persona* shall keep the Court and
 8 opposing parties advised as to his or her current address. If mail
 9 directed to a plaintiff *in propria persona* by the Clerk is returned by
 10 the U.S. Postal Service, and if such plaintiff fails to notify the Court
 and opposing parties within sixty-three (63) days thereafter of a
 current address, the Court may dismiss the action without prejudice
 for failure to prosecute."

11 E.D. Cal. Loc. R. 183(b) (2019); *see also* Local Rule 182(f) (all parties are "under a continuing
 12 duty" to notify the clerk of "any change of address."). Precedent supports a dismissal of a case
 13 when a litigant does not keep the court apprised on his address. *Carey v. King*, 856 F.2d 1439
 14 (9th Cir. 1988) (affirming lower court and finding no abuse of discretion when district court
 15 dismissed case without prejudice after *pro se* plaintiff did not comply with local rule requiring
 16 *pro se* plaintiffs keep court apprised of addresses at all times); *Hanley v. Opinski*, Case No. 1:16-
 17 cv-391-DAD-SAB, 2018 WL 3388510 (E.D. Ca. July 10, 2018) (dismissing action for failure to
 18 prosecute and failure to provide court with current address).

19 Alternatively, Federal Rule of Civil Procedure 41(b) permits the court to involuntarily
 20 dismiss an action when a litigant fails to prosecute an action or fails to comply with a court order.
 21 *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889 (9th Cir.
 22 2019) (citations omitted); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689
 23 (9th Cir. 2005) ("[T]he consensus among our sister circuits, with which we agree, is that courts
 24 may dismiss under Rule 41(b) *sua sponte*, at least under certain circumstances."). Local Rule 110
 25 similarly permits the court to impose sanctions on a party who fails to comply with any order of
 26 the court.

27 Involuntary dismissal is a harsh penalty, but it "is incumbent upon the Court to manage its
 28 docket without being subject to routine noncompliance of litigants." *Pagtalunan v. Galaza*, 291

1 F.3d 639, 642 (9th Cir. 2002). Before dismissing an action under Fed. R. Civ. P. 41, the court
 2 *must* consider: (1) the public interest in expeditious resolution of litigation; (2) the court’s need to
 3 manage a docket; (3) the risk of prejudice to defendant; (4) public policy favoring disposition on
 4 the merits; and (5) the availability of less drastic sanctions. *See Applied Underwriters*, 913 F.3d
 5 at 889 (noting that these five factors “must” be analyzed before a Rule 41 involuntary dismissal)
 6 (emphasis added); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (reviewing
 7 five factors and independently reviewing the record because district court did not make finding as
 8 to each factor); *but see Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000) (listing
 9 the same five factors, but noting the court *need not* make explicit findings as to each) (emphasis
 10 added); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (affirming dismissal of pro se §
 11 1983 action when plaintiff did not amend caption to remove “et al” as the court directed and
 12 reiterating that an explicit finding of each factor is not required by the district court).

13 ANALYSIS

14 The undersigned considers each of the above-stated factors and concludes dismissing this
 15 case is warranted. The expeditious resolution of litigation is deemed to be in the public interest,
 16 satisfying the first factor. *Yourish v. California Amplifier*, 191 F.3d 983, 990–91 (9th Cir. 1999).
 17 Turning to the second factor, the Court’s need to efficiently manage its docket cannot be
 18 overstated. This Court has “one of the heaviest caseloads in the nation,” and due to unfilled
 19 judicial vacancies, which is further exacerbated by the Covid-19 pandemic, operates under a
 20 declared judicial emergency. *See Amended Standing Order in Light of Ongoing Judicial*
 21 *Emergency in the Eastern District of California*. The Court’s time is better spent on its other
 22 matters than needlessly consumed managing a case with a recalcitrant litigant. Indeed, “trial
 23 courts do not have time to waste on multiple failures by aspiring litigants to follow the rules and
 24 requirements of our courts.” *Pagtalunan*, 291 F.3d at 644 (Trott, J., concurring in affirmance of
 25 district court’s involuntary dismissal with prejudice of habeas petition where petitioner failed to
 26 timely respond to court order and noting “the weight of the docket-managing factor depends upon
 27 the size and load of the docket, and those in the best position to know what that is are our
 28 beleaguered trial judges.”). Delays have the inevitable and inherent risk that evidence will

1 become stale or witnesses' memories will fade or be unavailable and can prejudice a defendant,
2 thereby satisfying the third factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Attempting a
3 less drastic action would be futile because two different orders issued by this Court were returned
4 as undeliverable. (*See* docket). Finally, the instant dismissal is a dismissal *without* prejudice,
5 which is a lesser sanction than a dismissal with prejudice, thereby addressing the fifth factor.
6 Further, contrary to Local Rule 183(b), more than 63 days have passed since this Court's August
7 24, 2022 Order was returned as undeliverable and Plaintiff has not updated his address or
8 otherwise contacted the Court. Thus, Plaintiff appears to have abandoned this action.

9 Considering these factors and those set forth *supra*, as well as binding case law, the
10 undersigned recommends dismissal, without prejudice, under Fed. R. Civ. P. 41(b) and Local
11 Rule 183(b).

12 Accordingly, it is **RECOMMENDED**:

13 This case be dismissed without prejudice for Plaintiff's failure to prosecute this action
14 and/or comply with the Court's order under Fed. R. Civ. P. 41 and Local Rule 110.

15 NOTICE TO PARTIES

16 These findings and recommendations will be submitted to the United States district judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
18 days after being served with these findings and recommendations, a party may file written
19 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
20 Findings and Recommendations." Parties are advised that failure to file objections within the
21 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
22 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23 Dated: January 3, 2023

24 
25 HELENA M. BARCH-KUCHTA
26 UNITED STATES MAGISTRATE JUDGE
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28